**IN THE MISSOURI DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

In Re: BCS INSURANCE COMPANY	)		
SERFF TRACKING NUMBER	)	**Case No.**	**140107015C**
BCSF-129327715	)		

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of BCS Insurance Company, SERFF Tracking Number BCSF-129327715, specifically Forms 25.1204 (MO), 25.1404 (MO), 25.1004 (MO), and 25.1005 (MO), the Director DISAPPROVES said forms for the reasons stated below.

FINDINGS OF FACT

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri ("Director" of the "Department").

2. BCS Insurance Company ("BCS"), NAIC Number 38245, is a foreign life and health insurance company organized pursuant to the laws of the state of Ohio and transacting insurance business in this state pursuant to a Certificate of Authority issued by the Director.

3. Pursuant to §376.405,[1] insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.

4. The Division of Market Regulation (the "Division") is designated pursuant to §374.075 with the review of forms that are filed by insurance companies.

5. BCS filed policy forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on December 9, 2013. The SERFF Tracking Number is BCSF-129327715 ("Filing").

6. The Filing contains forms: 25.1204 (MO), identified as the Group Fixed Indemnity Policy ("Group Policy"); 25.1404 (MO), identified as the Group Fixed Indemnity Certificate ("Certificate"); 25.1004 (MO), identified as the Group Fixed Indemnity Application ("Application"); and 25.1005 (MO), identified as the Group Fixed Indemnity Trust Participation Agreement and Application ("Participation Agreement").

[1] All statutory citations are to RSMo (Supp. 2013).

7. On December 23, 2013, BCS amended the Filing and replaced the Certificate with an amended form. When referring to the Certificate, it is the replacement form that is the subject of this Order.

8. Brackets ([...]) within a policy form reviewed by the Division indicate that the language within the brackets may change subject to underwriting modification or negotiations with the policyholder.

9. Brackets ({...}) within a policy form reviewed by the Division indicates that the language may be included or excluded from the policy form.

10. BCS filed this Group Policy within SERFF as a Hospital Medical-Surgical Fixed Indemnity policy.

11. On page 14 of the Certificate under the section titled Premiums and the subsection titled Grace Period, BCS states:

> The [Policyholder] has a 31 day grace period after each premium due date after the first premium. If a subsequent premium is not paid by the end of the grace period, coverage ends as of the premium due date. If this happens, the [Policyholder] owes us all premiums then due, including any premium due for the grace period or for any part of the grace period.

12. On page 1 of the Application, BCS states:

> The Policyholder agrees to pay to the Administrator all premiums, which become due and payable, and understands that any payment more than 31 days in default may cause the termination of the policy and suspension of all benefits as of the due date.

13. On page 1 of the Participation Agreement, BCS states:

> The Participating Employer agrees to pay to the Trustee or its Administrator all premiums, which become due and payable, and understands that any payment more than 31 days in default may cause the termination of the policy and suspension of all benefits as of the due date.

14. On page 4 the Group Policy under the section titled General Provisions and the subsection Your Statements, BCS states:

> In the absence of fraud, all statements made by you are deemed representations and not warranties. No statement made by you for the purpose of effecting insurance voids the insurance or reduces

benefits under this Policy, unless contained in a written instrument signed by you. A copy must have been furnished to you.

{Participating Employers' Statements: In the absence of fraud, all statements made by a Participating Employer are deemed representations and not warranties. No statement made by a Participating Employer for the purpose of effecting insurance voids the insurance or reduces benefits under this Policy, unless contained in a written instrument signed by the Participating Employer. A copy must have been furnished to the Participating Employer.}

15. On page 14 of the Certificate under the section titled Claim Provisions and the subsection titled Notice of Claim, BCS states:

> Written notice of claim must be given within 31 days after a covered loss starts or as soon as is reasonably possible. The notice must be given to the Administrator named on the Schedule of Benefits. Notice should include information that identifies the claimant and the Policy.

16. On page 15 of the Certificate under the section titled Claim Provisions and the subsection titled Time of Payment of Claim, BCS states:

> Benefits for loss covered by the Policy will be paid not more than 30 days after we receive proper written proof of the loss.

CONCLUSIONS OF LAW

17. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and "which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured," pursuant to §376.405.

18. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

BCS's Filing Does Not Substantively Provide All Provisions Required In All Group Policies Under Section 376.426

19. Section 376.426 states in relevant part:

> ***No policy of group health insurance*** shall be delivered in this state unless it contains in substance the following provisions, or provisions which … are more favorable…:

(1) ***A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the policy shall continue in force,*** unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. ***The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period***;

* * *

(3) ***A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued***, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties ***and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative;***

* * *

(8) ***A provision that*** written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. ***Failure to give notice within such time shall not invalidate nor reduce any claim*** if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

* * *

(11) ***A provision that*** all benefits payable under the policy other than benefits for loss of time shall be payable not more than thirty days after receipt of proof and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that ***any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof***[.]

(Emphasis added.)

20. BCS's Certificate, Application, and Participant Agreement are not compliant with Missouri insurance laws. Under the section titled "Premiums" and the subsection "Grace Period," the Certificate properly provides the 31-day grace period as required by §376.426(1), but then states "[i]f a subsequent premium is not paid by the end of the grace period, coverage ends as of the premium due date." Both the Application and Participant Agreement provide any payment after the end of the grace period results in the termination of all benefits as of the due date. Section 376.426(1) requires the policy to stay in full force during the grace period. The policy does not stay in full force because the policy ends the last day of the month for which the premium was paid. Because the policy is not in full force and retroactively terminates, the Certificate, Application, and Participant Agreement do not meet the substantive requirements of §376.426(1). As such, the Certificate, Application, and Participant Agreement do not comply with the laws of this state as required by §376.405.

21. BCS's Group Policy is not compliant with Missouri insurance laws. Under the section titled "General Provisions" and the subsection "Your Statements," BCS provides a portion of the required provisions within §376.426(3). However, BCS fails to substantively provide the remainder of the provisions from §376.426(3) and is, therefore, noncompliant for the following reasons:

    a. BCS fails to substantively notify the insured that "a copy of the application, if any, of the policyholder shall be attached to the policy when issued." Clearly there is an application as evidenced by the Application and Participation Agreement within the Filing; however, BCS does not provide the substantive notice provision as required by §376.426(3).

    b. While BCS does substantively provide that statements made by an insured will not be used in any contest unless a copy of the statement is contained in a written instrument and provided to the insured, BCS fails to substantively notify the insured that, in the event of death or incapacity of the insured, such a statement will be furnished to the individual's beneficiary or personal representative. Because BCS does not substantively notify the insured of required provision, the Group Policy does not comply with §376.426(3).

    As such, the Group Policy does not comply with the laws of this state as required by §376.405.

22. BCS's Certificate is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "Notice of Claim," the Certificate excludes a required substantive notice provision. While the Certificate does provide the appropriate time frame to provide notice, it does not notify the insured that failure to give notice within the time frame "shall

not invalidate nor reduce any claim" if it was not reasonably possible to do so as required by §376.426(8). As such, the Certificate does not comply with the laws of this state as required by §376.405.

23. BCS's Certificate is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "time of payment of claims," the Certificate properly provides that benefits for losses will be paid not more than 30 days after proof of loss is received, as required by §376.426(11). However, section 376.426(11) also requires the Certificate to substantively provide that "any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof." The Certificate does not provide the required substantive provision. As such, the Certificate does not comply with the laws of this state as required by §376.405.

24. After review and consideration of the policy forms included in the BCS Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.

25. While there may be additional reasons as to why these forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.

26. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.

27. BCS's Group Policy, Certificate, Application, and Participation Agreement do not comply with Missouri law. As such, said forms are not in the public interest.

28. This Order is in the public interest.

IT IS THEREFORE ORDERED that Forms 25.1204 (MO), 25.1404 (MO), 25.1004 (MO), and 25.1005 (MO) are hereby **DISAPPROVED.** BCS Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 24TH day of January, 2013.

JOHN M. HUFF
DIRECTOR

NOTICE

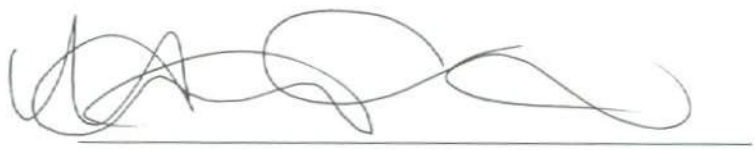
TO: BCS Insurance Company and any unnamed persons aggrieved by this Order:

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2013, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Howard F. Beacham, III
President
BCS Insurance Company
2 Mid America Plaza, Suite 200
Oakbrook Terrace, IL 60181

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